

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 72 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL SATAR ISMAIL HATHILA

Versus

MOHMAD ZUBER ALARAKHA KURESHI

Appearance:

MR NK PAHWA for Petitioner

MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/2000

ORAL JUDGEMENT

#. Heard learned counsel or the parties.

#. The plaintiff-respondent filed a suit of eviction of the defendant-petitioner from the suit premises under the Bombay Rent Control Act in the court of the small causes court at Surat. The eviction of the defendant-petitioner was sought from the suit premises on the ground of nonuser thereof. The suit was came to be decreed by the Small Causes Court, Surat on 29/10/85. The plaintiff-respondent filed a Darkhast No. 3/85 in Small Causes Court for execution of this decree and it is not in dispute that in execution of decree the possession of the premises has already taken by the plaintiff-respondent. Not only this after taking the possession, the suit premises is let out to other person. This decree of the Small Causes Court, Surat was challenged by the petitioner by filing an appeal in the court of District Judge, Surat. This appeal has been filed beyond the period of limitation. The defendant-petitioner filed an application for condonation of delay. Under the impugned order that application of the defendant-petitioner came to be rejected by the appellate, court hence this Civil Revision application.

#. The defendant-petitioner has also filed an application in the trial court under Order 9 Rule 13 of the Code of Civil Procedure for setting aside of the decree as what in his submission an ex-parte decree. This application is registered as Miscellaneous Application No. 66/86.

#. The learned First Appellate court held that the service of the summons of suit by the substituted service thereof was legal, correct and justified and as a result of this finding the application for condonation of delay is rejected.

#. In this state what I am seeing every day that the application filed by the the litigant for condonation of delay in filing substantive proceedings on its rejection they file the revision application. In fact, this practice which is there is totally contrary to the provisions of law. But it is being followed for the reasons that after dismissing the application for condonation of delay the court is not passing simultaneously the order of the dismissal of the substantive proceedings as barred by limitation. Moment the application filed by the litigant for condonation of delay in filing of the appeal is dismissed the appeal automatically stands dismissed as barred by limitation.

The order which has been passed on the application filed by the litigant under Section 5 is interlocutory order. I fail to see after dismissal of the application how the appeal could have been survived and accepted to have been remained pending. This only in fact and substance is an interlocutory order.

#. The approach and belief that even after the dismissal of the application, filed by them under Section 5 of Limitation Act the appeal still survives and remains pending is wholly misconceived. Even in the absence of a specific order made simultaneously of the dismissal of the appeal as barred by limitation the appeal shall have to be considered to have been dismissed and the appeal is only remedy and this order of dismissal of the application filed under Section 5 of Limitation Act can be challenged therein. Be that as it may.

#. The learned First Appellate court has not committed any material irregularity in exercise of its jurisdiction in passing of impugned order. This appeal is nothing but a mala fide act on the part of the defendant-petitioner to keep the matter alive. From the facts of this case it is clearly borne out that he has no interest in the premises. The ground of nonuser of the premises is perfectly legal and justified and was available for the plaintiff-respondent. The defendant-petitioner admitted as a fact that he is permanent resident of Gondal and not of Surat where the suit premises is situated. He has come up with the case that the summons of suit should have been sent to Gondal address. It is his case that the plaintiff-respondent was fully knowing his Gondal address but he has not produced cogent and satisfactory evidence to establish to the satisfaction of the court that the plaintiff-respondent was aware of his Gondal Address. It is not the case of the defendant-petitioner that he has given his Gondal address to the plaintiff-respondent. Before filing of the suit, the plaintiff-respondent given a notice to the defendant-petitioner at his Surat address. That notice has not been produced on the record of these proceedings. It is difficult to believe in these facts that notice was redirected to the Gondal address. The reply to the notice was sent. Along with the same it stated that the petitioner sent a draft of Rs.100/= towards arrears of rent but those documents have also not been produced on the record.

#. The learned Trial Court and learned First Appellate Court is correct in its approach that for filing of the suit of eviction on the ground of nonuser no notice is

required to be served. It is not in dispute that default in payment of the rent was not a ground for eviction of the defendant-petitioner from the suit premises. The defendant-petitioner has not proved that he has purchased a draft and send it to the plaintiff-respondent.

#. The notice of the suit has to be served upon the defendant on the suit premises. When the suit premises was not found open rightly the court has ordered for substitute service of summons and that has been done. The application is not bona fide application. It appears to be filed with oblique motives so as to extract money from the plaintiff-respondent. As per his own case, the defendant-petitioner is not using this premises either for commercial or residential purposes. He has settled at Gondal and still he wants to keep this matter alive which clearly show that he has oblique motive in filing of this application.

##. The possession of the suit premises was taken long back. A notice has been sent at the address of the tenanted premises. It is served by the substitute service. In case, such applications are encouraged it will give rise to unscrupulous litigants the opportunity to fulfil their oblique motives and desires. The substance, the conduct and motive of the litigants are utmost important and not the technical pleas that is sought to be raised.

##. In case, the order of First Appellate court is allowed to stand it will not occasion any failure of justice nor cause irreparable injury to the petitioner.

In the result, the Civil Revision Application fails and the same is dismissed. Rule is discharged. The petitioner is directed to pay the costs of this Civil Revision Application to the respondent.

(S.K.Keshote, J.)

*PvV